

From: Jonathan Doughty
To: Microsoft ATR
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Subject: Microsoft Settlement

TO:

Renata B. Hesse
Antitrust Division
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

FROM:

Jonathan Doughty
9701 Rhapsody Drive
Vienna, VA, 22181

I urge you to reject the Proposed Final Judgement (PFJ) and replace it with one that is simpler to test Microsoft's adherence to, allows for the full range of competitors to Microsoft's practices including explicitly addressing open source alternatives, and better protects consumers from being the continuing victims of Microsoft's monopolistic practices.

The PFJ does not, as stated in the Competitive Impact Statement provide "prompt, certain and effective remedies for consumers." Nor will the PFJ "eliminate Microsoft's illegal practices, prevent recurrence of the same or similar practices, and restore the competitive threat that middleware products posed prior to Microsoft's unlawful undertakings" as also stipulated in that statement.

Microsoft has shown by past and current monopolist behavior, by its tactics of embracing and extending technology in ways that force consumers to use and upgrade only its products (e.g., their extensions to the Kerberos security protocols), by selectively incorporating technology that in some cases it has appropriated from competitors into its operating system (e.g., Stac Electronics disk compression and Mosaic browser-based technology), and by adding code into their operating systems and middleware that unfairly targets competitors products (e.g., the DR/DOS code added to Windows 3.1 and the way in which consumers were steered away from Kodak applications for digital photography in the just released Windows XP) that they actively work against consumer choice.

The PFJ does not ensure "computer manufacturers have contractual and economic freedom to make decisions about distributing and supporting non-Microsoft middleware products without fear of coercion or retaliation by Microsoft" because it specifically allows Microsoft to

enforce "any provision of any license with any OEM or any intellectual property right that is not inconsistent with" the PFJ. One can already find examples of a variety of Microsoft End User Licensing Agreements (EULA) in which Microsoft has forced consumers and OEMs to accept agreements that effectively tie use of Microsoft products to its middleware and operating systems and restrict the consumers right to substitute competitive technology.

The PFJ does not ensure "that computer manufacturers have the freedom to configure the personal computers they sell to feature and promote non-Microsoft middleware, and ensuring that developers of these alternatives to Microsoft products are able to feature those products on personal computers, by prohibiting Microsoft from restricting computer manufacturers' ability to install and feature non-Microsoft middleware and competing operating systems in a variety of ways on the desktop and elsewhere." Microsoft has already demonstrated they have no intent to adhere to this restriction by insisting, prior to the release of Windows XP, that their own products be given equal display on the desktop to competitive alternatives.

Finally, Microsoft has shown by its behavior of rushing products to market to further extend its monopolies, while continually delaying and extending the trials that might restrict that behavior, that it has no intention of modifying the past behaviors with which it has so successfully eliminated competition and restricted consumer choice. The PFJ is riddled with loopholes, more even than the 1994 consent decree that Microsoft flaunted the intent of, while at the same time providing cover for Microsoft to browbeat competitors with the very language that is supposed to protect those competitors. For example, the PFJ's wording explicitly excludes Microsoft from having to deal with the one consumer alternative that Microsoft has recently shown the most fear of, the open source movement, by explicitly allowing Microsoft to condition the release of documentation of its APIs and communications protocols based on Microsoft's own judgement that the third party "meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business."

The PFJ states "Microsoft shall begin complying with the revised proposed Final Judgment as it was in full force and effect starting on December 16, 2001." I believe a court interested in ensuring consumers' choice would agree that Microsoft's actions since the release of the PFJ on November 6, 2001 with respect to their .NET initiative, their attempts through orchestrated "grass roots" campaigns to influence the outcome of the court and legislative inquiries into their activities, the security of their existing products in maintaining consumers privacy and Microsoft's lack of ability to protect that trust, and their attempts to advance their monopolies into other markets (e.g., gaming devices and multimedia) demonstrate that Microsoft's is already flaunting the intent of the PFJ just as it has in the past flaunted the

intent of other consent decrees.

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Jonathan Doughty